



Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009

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Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009

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Portfolio: Education, Employment and Workplace Relations

Commencement: On the day it receives Royal Assent

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of this Bill is to amend the *Education Services for Overseas Students Act 2000* to among other things:

- require the re-registration of all institutions currently registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) by 31 December 2010
- introduce two new registration requirements for education providers, and
- require providers to list the names of their agents and comply with any regulations relating to them.

These changes are being made pending a review of the Act.

Background

Introduction

Australia's international education industry has come under intense national and international media scrutiny due to recent protests in Australia by Indian students following number of violent assaults. At the same time there were media images of international students being 'locked out' following the closure of a number of colleges' and exposure by the media of some sub-standard education services and questionable practices by some providers, and by education and immigration agents. These have all contributed to the perception of widespread immigration rorting and of an education industry in crisis.

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While the Australian Government has assured the public that Australia is ‘a high-quality, safe study destination for international students’ and that ‘most international students have an overwhelmingly positive experience studying in Australia’ there has been the admission that ‘a range of issues adversely affecting the well-being of international students and their education experience in Australia have recently come to light’.¹

The strengthening of the regulatory framework that governs the international education industry provided for in this Bill, is one of the initiatives in response to some of these issues. The measures, specifically the proposed new registration conditions for providers, the compulsory re-registration process for all existing providers, and the requirement for greater transparency in relation to their agents, are attempts to shore up the education credentials of those operating in the industry.

In addition to these measures the Commonwealth Government and state/territory governments have embarked on a number of other initiatives to reinstate confidence in the industry. These include official visits to India to repair the damage that has been done to Australia’s reputation in that country, and also:

- bringing forward the Commonwealth Government’s planned [review of Australia’s regulatory framework, the Education Services for Overseas Students Act 2000](#) (the ESOS Review) that was scheduled for 2010–11. It is expected that an interim report will be presented to COAG in November 2009, and a final report in early 2010. A newly established [International Students Taskforce](#) within the Department of Education, Employment and Workplace Relations (DEEWR) will provide secretariat services
- the development through COAG of a [National International Student Strategy](#) to improve the quality of education for international students and their well-being. It is expected to be in place in the 2010 academic year
- the holding of an [International Student Roundtable](#) (1415 September 2009) to enable discussion with students about the issues affecting their experience in Australia and an opportunity to put forward ideas on how to address their concerns, and
- the creation of a [hotline](#) for students to raise concerns.²

In addition, the Australian Senate’s Education, Employment and Workplace Relations References Committee has commenced its [Inquiry into the Welfare of International](#)

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1. Department of Education, Employment and Workplace Relations, ‘International Students Taskforce and ESOS Review’, viewed 1 September, 2009, <http://aei.gov.au/AEI/GovernmentActivities/InternationalStudentsTaskforce/Default.htm>
 2. The source of all these links is the Department of Education, Employment and Workplace Relations, ‘International Students Taskforce and ESOS Review’, viewed 1 September, 2009, <http://aei.gov.au/AEI/GovernmentActivities/InternationalStudentsTaskforce/Default.htm>

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Students.³ The terms of reference include issues that touch upon immigration policy namely the issue of ‘appropriate pathways to permanency’. Victoria and New South Wales (NSW) have also announced that they have commenced fast-track audit procedures for high risk providers.⁴

Trends in Australia’s international education industry

Australia’s international education industry which provides services to overseas students who come to Australia on a student visa in the higher education, vocational education and training (VET), secondary school or English language sectors, has grown substantially over the last decade. In the year 2000 the industry was estimated to be Australia’s fifth largest export industry worth \$3 billion.⁵ Some estimates of its current worth are as high as \$15 billion which would make it Australia’s third largest export industry.⁶

As at June 2009 there were 467 407 enrolments by full-fee international students in Australia on a student visa, compared with 204 401 in June 2002. Between June 2008 and 2009 alone, there has been growth in enrolments across all education sectors of the order of 19.6 per cent.⁷

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3. Senate Education, Employment and Workplace Relations References Committee, *Inquiry into the Welfare of International Students*, viewed on 8 September 2009, http://www.aph.gov.au/Senate/committee/eet_ctte/international_students/index.htm
 4. Explanatory Memorandum, Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009, p. 2.
 5. Figure quoted in C Kempner and N Hancock, *Education Services for Overseas Students Bill 2000*, Bills digest, No. 62, 2000-01, Parliamentary Library, Canberra, 2000, p. 2, viewed 2 September 2009, http://parlinfo.parlInfo/download/legislation/billsdgs/LBR26/upload_binary/lbr267.pdf;fileType=application/pdf#search=%22esos%22
 6. The Department of Education, Employment and Workplace Relations, *Annual report 2007–08*, p. 130, provides an estimate of \$12.5 billion. Much of the recent media coverage uses a figure for trade in international education services of \$15 billion, from ABS, *International Trade in Goods and Services, Australia (Cat no 5368.0): Table 11, Credits (Exports)*. This figure has been queried by B Birrell in ‘Export figures exaggerated’, *The Australian*, 5 August 2009, p. 34 and defended by G Withers, in ‘Sector’s \$15bn-plus export figures really stack up’, *The Australian*, 12 August 2009, p.34. Further discussion of these and international estimates is provided by G Maslen, in ‘Don’t count on earnings’, *The Australian*, 12 August 2009, p. 30.
 7. The figures in this section are drawn from Australian Education International, *Monthly Summary of International Student Enrolment Data*, various dates, viewed 2 September 2009, <http://aei.gov.au/AEI/MIP/Statistics/StudentEnrolmentAndVisaStatistics/Default.htm#data>

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While the university sector originally accounted for most enrolments and most of the initial growth, since 2005 growth in the VET sector has increased more rapidly. June 2009 figures show that the VET sector now ranks first both by volume of enrolments and commencements. Over the last twelve months it has also continued to be the fastest growing sector with enrolments growing 39.3 per cent. By contrast higher education sector enrolments grew by only 11.6 per cent.

The private education sector is a significant player in this industry and in the VET sector in particular. Seven hundred of the Australian Council for Private Education and Training's (ACPET's) 1200 members provide educational services to international students.⁸ In a study on international student enrolments, Australian Education International notes that the growth in VET student numbers has been mainly taken up by non-government VET providers:

In 2008 the majority of all VET enrolments were with the 437 non-government providers. The non-government provider share has grown from 73% in 2002 to 84% in 2008 and is more dominant in New South Wales than in any other state or territory—92% of VET enrolments in the state are enrolled with a non-government provider.⁹

Although China accounts for the highest number of enrolments of all source countries across all education sectors and India is second (111 855 and 89 564 respectively as at the end of June 2009), when it comes to the VET sector, the order is reversed. India is at the top with 57 513 enrolments and China next with 25 317. Analysis shows that half of the total growth in the VET sector since 2005 can be attributed to courses recorded as being in the cooking, hairdressing, hospitality and hospitality management fields. Given the recent focus on issues relating to Indian students it is worth noting that the growth in the number of Indian students in these particular courses is significant—from 217 commencements in 2002, to 18 269 commencements in 2008.¹⁰

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8. Australian Council for Private Education and Training (ACPET), *Submission to the Senate Inquiry into the welfare of international students*, 2009, p. 2, viewed on 2 September 2009, <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=5b8766d8-56ee-4680-a223-d5e91123c9a1>; for more information on the private education industry see also Access Economics, *The Australian education sector and the economic contribution of international students: report by Access Economics for Australian Council for Private education and Training*, 2009.
 9. Australian Education International, *International Student Enrolments in Vocational Education and Training in 2008*, Research snapshot, 2009, viewed on 1 September 2009, http://www.aei.gov.au/AEI/PublicationsAndResearch/Snapshots/46SS09_pdf.pdf
 10. B Birrell and B Perry, '[Immigration policy change and the international student industry](#)', *People and place*, vol. 17, no. 2, p. 66, viewed 4 September 2009, http://parlinfo.parlInfo/download/library/jrnart/TN8U6/upload_binary/tn8u60.pdf;fileType=application/pdf#search=%22immigration%20policy%20change%20birrell%22

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The influence of immigration policy

Dr Bob Birrell, an immigration policy analyst from Monash University has credited much of the growth in demand for education services to changes in 2001, to Australia's skilled migration policy in response to meeting Australia's skills shortages. He explains that under these changes:

overseas students who had completed post-school credentials at an Australian university or vocational education and training (VET) college were permitted to apply for skilled permanent residence visas from within Australia in designated skilled occupations, as long as they did so within six months of completing their course.¹¹

He links the growth in the cooking and hospitality fields in particular to migration selection rules that:

allowed students who had completed a one year Certificate III (or equivalent) credential in cooking or hairdressing in a full time course at a private college or Technical and Further Education (TAFE) institution to qualify as a skilled migrant for permanent residence under the GSM [Australia's General Skilled Migration categories].¹²

Future prospects

Given the apparent influence of immigration policy on recent developments in the international education industry, it may be reasonable to expect that recent changes to this policy will have some impact on demand and supply.

In response to changing economic circumstances, and reportedly also on account of findings that the job outcomes for former overseas students trained in Australia were poor, largely on account of English language deficiencies, the Rudd Government has changed its skill selection priorities and procedures.¹³ The focus is on skilled recruitment around employer and state government sponsorships. From January 2009 the Government is using a new 'critical skills' list. Notably cooking and hairdressing were not on this list and in March 2009 other trades were removed.¹⁴ In May 2009 the Government announced that

11. Birrell and Perry, op. cit., p. 65.

12. Birrell and Perry, op. cit., p. 66.

13. C Evans (Minister for Immigration and Citizenship), *Migration program gives priority to those with skills most needed*, media release, 17 December 2008, viewed 7 September 2009, <http://www.chrisevans.alp.org.au/news/1208/immimediarelease17-02.php>; Birrell and Perry, op. cit., p. 68.

14. C Evans (Minister for Immigration and Citizenship), *Government cuts migration program*, media release, 16 March 2009, viewed 7 September 2009, <http://www.minister.immi.gov.au/media/media-releases/2009/ce09030.htm>

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the English language minimum requirement for trade occupations would be increased and that a skills test would be instituted.¹⁵

There is now speculation about what might be the effect on student demand and on the international education industry of these changes. There is an expectation that there will be some industry adjustment particularly around the hospitality area. Dr Birrell has said:

Those providers who have built their business around marketing a credential that will lead to permanent residence must refocus their business. They need to sell credentials that overseas students believe they can take back to their country of origin with profit.¹⁶

What might be the impact of these changes on the higher education sector and other VET courses is perhaps less clear. Birrell expects that the higher education sector will also be affected as ‘graduates in accounting, a field that had enjoyed strong growth, had to have better English or take on an extra year of professional training’.¹⁷

Recent reports of a surge in students in the hospitality fields would suggest that these changes might not yet be understood by the industry. The long term implications for these new enrolments and for former overseas students aspiring to gain permanent residency have yet to be played out.¹⁸

Developments in the regulatory framework

The Australian Government’s Education Services for Overseas Students (ESOS) regulatory framework was established to protect the reputation of a significant export industry, maintain the integrity of the migration program and protect the interests of overseas students as consumers. It was substantially strengthened in 2000 amidst allegations, similar to those that are currently circulating, of immigration rorts, ‘shonky’ providers, poor quality education services and exploited students.¹⁹

The strengthened ESOS framework includes:

- the [Education Services for Overseas Students Act 2000 \(ESOS Act\)](#),

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15. C Evans (Minister for Immigration and Citizenship), *Migration program: the size of the skilled and family programs*, media release, Canberra, 12 May 2009, viewed 14 May 2009, <http://www.minister.immi.gov.au/media/media-releases/2009/ce02-budget-09.htm>
 16. B Lane, [‘Visa crackdown will hit numbers’](#), *The Australian*, 27 July 2009, p.21.
 17. Birrell quoted in Lane, op.cit., p. 21.
 18. For further discussion of these issues see Birrell and Perry, op.cit., pp.72–79.
 19. For details on the background to these changes, see C Kempner and N Hancock, *Education Services for Overseas Students Bill 2000* (and other related Bills), Bills digests, Nos. 62–66, 2000–01, Parliamentary Library, Canberra, 2000.

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- the *Education Services for Overseas Students (Registration Charges) Act 1997*,
- Education Services for Overseas Students Regulations 2001,
- the [National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students \(National Code 2007\)](#), and
- the *Education Services for Overseas Students (Assurance Fund Contributions) Act 2000*.²⁰

The integrity of the industry is strengthened by the ESOS legislation's interface with immigration law. This imposes visa-related reporting requirements on both students and providers.

The principal objects of the ESOS Act are:

- to provide financial and tuition assurance to overseas students for courses for which they have paid
- to protect and enhance Australia's reputation for quality education and training services, and
- to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

The arrangements under the ESOS Act include:

- provisions for the registration of education providers and their courses on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)
- the compulsory membership by providers of a tuition assurance scheme
- contributions by providers to an assurance fund to ensure that there are funds to pay for student tuition in cases of provider collapse
- reporting obligations on providers—for example the disclosure of provider activities such as previous breaches, or breaches of their associates, or student breaches
- a compulsory national code which sets standards and benchmarks for providers and their courses in order to qualify for registration and which serves to guide states and territories in their approval, registration and monitoring activities
- compulsory compliance with the national code
- sanctions for being in breach of both the Act and the National Code, and

20. General Information on the ESOS regime can be obtained at:
http://www.dest.gov.au/sectors/international_education/policy_issues_reviews/key_issues/esos/#Introduction_and_Easy_Guide_to_ESOS

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- Commonwealth powers to investigate providers, impose sanctions and remove non *bona fide* operators from the industry.

Shared Commonwealth, State and Territory responsibilities

The provision of education and training to overseas students who come to Australia on a student visa is a responsibility shared by the Commonwealth and the state and territory governments. The model of shared responsibility is one that not only involves the administrative effort of the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) and the Commonwealth Department of Immigration and Citizenship (DIAC), but also that of the state/territory education and training authorities operating under state/territory legislation. The respective roles, responsibilities and powers are well summarised in the following excerpt:

In summary, the model has the following core features:

- States and Territories have first-line responsibility for quality assurance of institutions and courses for overseas students, including the application to providers of other sector-specific national quality assurance frameworks (where they exist);
- The Australian Government retains certain reserve powers to act in the national interest in order to protect the integrity and quality of the industry; and
- The National Code provides nationally consistent standards for the registration, and conduct, of providers of education and training services for overseas students.²¹

The ESOS framework therefore builds on the role that state and territory governments have in regulating the delivery of education services to domestic students. In doing this it minimises the regulatory burden on registered providers by applying existing state and territory registration, accreditation and compliance systems to the regulation of the industry providing education and training for overseas students. Therefore under this framework the states and territories have primary responsibility for the quality control of education providers and their courses and exercise this through their processes of approving, registering and monitoring providers and their courses. Their responsibilities include the exercise of enforcement powers which extend to the suspension and deregistration of providers.

However, both the Commonwealth and the states/territories have responsibility for enforcement. Part B of the National Code 2007 notes:

21. PhillipsKPA and LifeLong Learning Associates, *Evaluation of the Education Services for Overseas Students Act 2000*, Australian Education International, Department of Education, Science and Training, Canberra, 2005, p. 43, viewed 6 September 2009, http://www.dest.gov.au/NR/rdonlyres/BCE952F7-57F0-4D3C-ADE4-5795781B5C96/6117/ESOS_Evaluation_Report_web_postproof_v2.pdf

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... while DEST [DEEWR] is primarily responsible for investigating and instigating enforcement action for breaches of both the ESOS Act and the National Code, state and territory governments often have enforcement mechanisms available through their legislation. Pursuing enforcement action through these mechanisms may be more appropriate given the nature of the breach, particularly if the state or territory government has specific legislation related to ESOS matters.²²

Review of ESOS and subsequent improvements

As required by the ESOS Act, an independent evaluation of the operation of the Act was conducted which commenced in May 2004 and reported in June 2005 (the 2005 Evaluation). The 2005 Evaluation assessed the effectiveness of the ESOS Act in achieving its objectives to:

- provide nationally consistent registration of education and training providers for overseas students studying in Australia
- minimise the presence in the industry of providers lacking integrity or who facilitate student breaches of their visa conditions
- ensure students receive either alternative tuition or a refund if they are unable to receive the tuition for which they have paid, and
- support migration policy.

The 2005 Evaluation's conclusions generally endorsed the regulatory model:

The architecture of the quality benchmarks represented by the ESOS framework is sound: standards for providers of education and training that are mandatory and operate nationally; a cooperative national regulatory model; the characterisation of the student-institution relationship in consumer terms; and the integration of export education and migration policy.²³

Many of the 41 recommendations to improve the framework's effectiveness were implemented in the amendments to the Act in 2006.²⁴

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22. Australian Education International, *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*, Commonwealth of Australia, Canberra, 2007, p. 4, viewed 3 September 2009, http://aei.gov.au/AEI/ESOS/NationalCodeOfPractice2007/National_Code_2007_pdf.pdf
23. Phillips KPA and LifeLong Learning Associates, op.cit., p. xxxiii.
24. *Education Services for Overseas Students Legislation Amendment (2006 Measures No.1) Act 2006* and *Education Services for Overseas Students Legislation Amendment (2006 Measures No.2) Act 2006*.

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The ESOS Act was also touched upon in a 2004 report of the Joint Standing Committee on National Capital and External Territories. The report recommended that the ESOS Act be amended so that it applied to the Indian Ocean Territories.²⁵

Further amendments to the ESOS Act in 2007 included implementation of some of the remaining recommendations of the 2005 Evaluation, some amendments to reflect changes to the National Code that came into effect in July 2007, and changes designed, in the words of the Explanatory Memorandum to ‘provide flexibility in the allocation of the roles and responsibilities between the Australian Government and the states and territories governments under the Act’.²⁶

Key issues

The provisions in this Bill will commence a process of regulatory tightening before the review of the ESOS Act reports in early 2010. The new registration requirements aim to strengthen the education credentials of new providers. They require that the principal purpose of providers should be to provide education, and that they should have demonstrated capacity to provide education of a satisfactory standard. The re-registration of all existing providers will also involve assessing incumbents against this new criteria. There are however legitimate questions to be asked not only about how these requirements will be defined and applied by state and territory authorities, but also about the capacity of the regulatory authorities to take on this additional regulatory workload.

Many of the problems that have recently been exposed by the media hype—sub-standard education from some providers, student complaints not addressed, the closure of a number of unviable colleges, immigration rather than education motives for the existence of some providers and their collusion with students and education and migration agents to achieve migration outcomes—are not new. They have been occurring, periodically since the early 1990s, albeit in different contexts.²⁷ Furthermore, articles and reports signalling the

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25. Joint Standing Committee on National Capital and External Territories, *Indian Ocean Territories: Review of the Annual Reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage*, Commonwealth of Australia, Canberra, 2004.
 26. ‘Outline’ in the Explanatory Memorandum, Education Services for Overseas Students Legislation Amendment Bill 2007. Note that the pages of Explanatory Memorandum are not numbered.
 27. S Matchett, ‘[A study in migration rorting](#)’, *The Australian*, 27 July 2009, p. 21, viewed 4 September 2009, http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/FG6U6/upload_binary/fg6u60.pdf;fileType=application%2Fpdf#search=%22media/pressclp/FG6U6%22

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current set of problems have been circulating for some years.²⁸ There are also many claims that despite the regular reporting of failures by institutions to provide quality services, there has been little action.²⁹

In seeking to reassure the public that except in the case of a minority of providers, the international education industry is sound, government and industry representatives have generally endorsed the regulatory framework, albeit noting some scope for improvement to 'meet changing circumstances'.³⁰

A key question therefore is why the regulatory framework that was strengthened in 2000, endorsed by a review in 2004 and which is even now still widely endorsed, appears to have failed to weed out the reportedly, small number of unscrupulous providers and agents that are jeopardising the industry.

There are some who have attributed the problem to lack of clarity about responsibilities for enforcement and/or to inadequate regulatory resourcing. Professor Ian Young, Vice Chancellor of Swinburne University of Technology has written:

... the entire system is being threatened by a small number of private providers who act irresponsibly. Yet it is not through lack of regulation but due to lack of

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28. Researcher, Bob Birrell has for some years been studying and documenting trends in the relationship between the overseas education industry and Australia's immigration policy. He has highlighted a range of policy and regulatory issues in articles in the journal *People and Place*. For a recent assessment see B Birrell and B Perry, 'Immigration policy change and the international student industry, *People and place*, vol. 17, no. 2, 2009, pp.64–80. Other examples are provided by the Australian Education Union in its *Submission to the Senate Inquiry into the welfare of international students*, 2009, p. 3, viewed 2 September, <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=793b5865-2b95-48d8-b1c7-5b1e325f5cbe>
29. See for example B Mackenzie and V Simmons, '[Support found to be wanting](#)', *Campus review*, 18 August 2009, p.20, viewed 4 September 2009, http://parlinfo.parlInfo/download/library/jrnart/UPGU6/upload_binary/upgu61.pdf;fileType=application/pdf#search=%22support%20found%20wanting%22
30. IDP Education Pty Ltd, *Inquiry into the welfare of international students :submission to the Senate Education, Employment and Workplace Relations Committee*, 2009, p. 4, viewed 2 September 2009, <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=917f94c7-2b7e-458b-8fba-be7ac042e34c>, and Australian Council for Private Education and Training, *Submission to the Senate Inquiry into the welfare of international students*, 2009, p.5, viewed 2 September 2009, <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=5b8766d8-56ee-4680-a223-d5e91123c9a1>

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enforcement, as a result of under resourcing of agencies by state and federal governments, and a lack of jurisdictional clarity about enforcing compliance.³¹

There have been several reasons proffered as to why the resources available for enforcement may have been inadequate. IDP Education Pty Ltd, the largest student placement service in Australia, has noted that there has been a large increase in the number of international students in the VET sector and that ‘the commensurate increase in numbers of private VET colleges taxed the ability of State governments to effectively regulate the sector’.³² In a recent article, two Chief Executives of TAFE institutes have placed what was happening in the international education industry, in the context of the government supported expansion of a competitive market for education services to domestic students:

In the interests of competition, well over 4000 training organisations have been registered across Australia, fewer than 60 of which are publicly funded TAFE institutes. While not all of these offer international education, the size of the system that has been allowed to be created jeopardises the capacity for it to be rigorously controlled and creates an irresistible opportunity for unscrupulous operators.³³

Others however, have questioned the resolve of the regulatory authorities to enforce the regulations for fear of the destabilising effects on providers and the adverse effects on their students:

David Phillips, an adviser to the Bradley review ... told the HES [Higher education Supplement] the states already possessed a “big stick”. Their powers included deregistration of providers. “It may be worth examining whether a lower level of sanctions could be introduced to avoid the problem of states being reluctant to intervene because of the impact of deregistration on students”.³⁴

Concerns about student welfare and consumer protections are reinforced by recent media reports that the tuition assurance fund is depleted. There are also concerns that other colleges may not have the capacity to take on the numbers of displaced students in view of the number of college closures in recent years.³⁵ Although these claims have been

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31. Professor I Young has written ‘Australia has an enviable system for protecting the rights of international students’, in I Young, ‘Time to act is now’, *Campus review*, 18 August 2009, p. 8.
 32. IDP Education Pty Ltd, *Inquiry into the welfare of international students*, op. cit., p. 3.
 33. Mackenzie and Simmons, op. cit., p. 21.
 34. G Healy, ‘[Crackdown on student recruitment](#)’, *The Australian*, 12 August 2009, p. 29, viewed 6 September 2009, http://parlinfo/parlInfo/download/media/pressclp/CDDU6/upload_binary/cddu60.pdf;fileType=application/pdf#search=%22crackdown%20recruitment%20healy%22
 35. G Healy, ‘[Overseas students in limbo as college collapses](#)’, *The Australian*, 17 July 2009, p. 7, viewed 6 September 2009,

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challenged, the real possibility of further closures following the fast-tracked audits, the re-registration process proposed in this Bill, and any industry corrections due to recent changes in immigration policy, are likely to put further stress on these arrangements.³⁶ The provisions in the Bill that would allow some flexibility around education providers collecting monies from their existing students when a course has been suspended, would appear to be an attempt to enable the authorities to take compliance action, while also providing for some stability.

Some view the issue of government resolve regarding its enforcement role in terms of traditional tensions that have existed between education and immigration policy priorities. These are often explained in terms of the immigration authorities traditionally being concerned with ensuring that only bona fide students get visas, while the education bureaucracy is ‘keen to grow student numbers’.³⁷ This has recently been expressed more bluntly by immigration policy analyst Bob Birrell. In response to a question about why the Government had not addressed the allegations of immigration scams earlier, Dr Birrell recently told the *Four Corners* report:

Well, basically they’ve been bedazzled by the dollars. As the figures mounted in billions, every year, and they could proudly say that this is a \$15 billion industry, more than wheat, wool, and meat put together, there’s perhaps an understandable reluctance to look critically at the foundation of the industry.³⁸

The recent debate conducted in the media about the real value of the education industry to the Australian economy may also be understood in the context of these tensions.³⁹ The issues are therefore often assessed as either an immigration, or an education policy problem as seen by these two quotes from immigration and an education policy analysts

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FG25U6%22>; and G Healy and A Trounson, ‘Cash crisis and back-up fund hits the skids’, *The Australian*, 22 July 2009, p. 21, viewed 6 September 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FBG6U6%22>

36. For the counter argument see J Ross, ‘[International student bailout arrangements not in trouble](#)’, *Campus review*, 4 August 2009, p. 4, viewed 2 September 2009, http://parlinfo/parlInfo/download/library/jrnart/CJCU6/upload_binary/cjcu60.pdf;fileType=application/pdf#search=%22international%20student%20bailout%22
37. Former Immigration Minister Phillip Ruddock is reported to have noted ‘the Immigration Department traditionally focused on ensuring that bona fide students entered Australia, while the federal education bureaucracy had been “keen to grow student numbers”’, in G Healy, ‘Crackdown on student recruitment’, op. cit., p. 29.
38. ‘Holy cash cows’, *Four Corners*, transcript (edited), Australian Broadcasting Corporation, 27 July 2009.
39. See footnote 5 for more details.

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respectively—‘the education business had come to distort the migration program’,⁴⁰ or on the other hand, ‘the problem belongs to the immigration system, not education institutions selling a quality product’.⁴¹

Policy makers might however be better served by a more holistic assessment of the influences behind the current set of problems. The traditional competing interests of education and migration policies would appear to have become inter-linked in recent years by the education based skill selection policies, and if anything have reinforced each other.⁴² The influence these migration policies have had on the growth and development of the international education industry will have contributed to the regulatory workload. This is likely to have been compounded by the simultaneous growth of the domestic education market.

While great store is being placed on the capacity of the regulatory system to address all these complex issues, ongoing constraints on federal and state budgets are likely to place limits on the work that the regulatory authorities can realistically handle. The experience of the last decade shows that the development of Australia’s education industry is sensitive and responsive to demand. Australia’s education based immigration skills selection policy has contributed to this demand. Given the likelihood that it will, in some form, remain a feature of Australia’s skilled migrant intake, this policy will continue to be a critical influence on the international education industry. Therefore, how it is framed is likely to be as important to the development of a quality international education industry, as is the regulatory framework that protects this industry.

Miscellaneous

Committee consideration

The Bill has been referred to the Senate Education, Employment and Workplace Relations Legislation Committee for inquiry and report by 16 October 2009. Details of the inquiry are at http://www.aph.gov.au/Senate/committee/eet_ctte/esos/index.htm

Position of significant interest groups/press commentary

The provisions of this Bill that require all existing registered providers to re-register have been reported in the media as being a threat to the expansion of the private training

40. Bob Birrell, immigration policy analyst in Lane, op.cit., p. 21.

41. Stephen Matchett, an education policy analyst for *The Australian* in Matchett, op.cit., p. 28.

42. Birrell points out that ‘by 2007–08 nearly half of the skilled migrants being visaed under Australia’s General Skilled Migration (GSM) categories were former overseas students trained in Australia’, see Birrell and Perry, p.66.

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industry. Media reports quote comments from migration agents that the requirements ‘could force a number of colleges to shut pre-emptively before the end of 2010’.⁴³

Industry representatives are calling for a more targeted approach that would involve only the high risk areas. The private education sector is reported to be asking the Government ‘to better target the tougher criteria to high-risk areas of the sector and not apply them to everyone’.

The university sector is reported to have claimed that ‘they already meet the new criteria and are unfairly being lumped together with questionable private colleges’. A university representative is also reported to have said that the re-registration process would be ‘onerous and costly and distracting from major issues facing the sector’. She also said that the issue is more one of enforcement of existing standards. A number of members of the university sector are also reported to have questioned how a provider’s ‘capacity to provide education of a satisfactory standard’ (one of the new requirements for registration) will be determined. In a similar vein, responding to the announcement of the ESOS Review, Professor Dean Forbes, Deputy Vice Chancellor (International) at Flinders University is reported to have said ‘It’s pretty clear where the tightening up needs to occur—it’s in the private VET sector’.⁴⁴

Opposition parties’ policy position/commitments

Opposition party responses to the announcement of the ESOS Review, and to the international education issues more generally, have supported the need for greater Commonwealth action.

The Coalition’s immigration and education Shadow Ministers, Dr Sharman Stone and Dr Andrew Southcott had been calling on the Government to instigate an independent inquiry.⁴⁵ In responding to the Government’s announcement of the ESOS Review Dr

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43. Except where otherwise cited the quotes in this section are drawn from A Symonds, ‘[Blitz on shonky colleges](#)’, *Australian Financial Review*, 20 August 2009, p. 10, viewed 3 September 2009, http://parlinfo/parlInfo/download/media/pressclp/KYFU6/upload_binary/kyfu61.pdf;fileType=e=application/pdf#search=%22blitz%20shonky%22
44. In J Ross, ‘[International review will stick to ESOS issues: Baird](#)’, *Campus review*, 18 August 2009, p. 4, viewed 6 September 2009, http://parlinfo/parlInfo/download/library/jrnart/NPGU6/upload_binary/npgu60.pdf;fileType=e=application/pdf#search=%22ross%20international%20review%22
45. S Stone (Shadow Minister for Immigration and Citizenship) and A Southcott (Shadow Minister for Employment Participation, Training and Sport), ... *and the evidence just keeps coming*, media release, 28 July 2009, viewed 6 September 2009, http://parlinfo/parlInfo/download/media/pressrel/BX8U6/upload_binary/bx8u60.pdf;fileType=e=application/pdf#search=%22evans%20students%22

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Southcott is reported to have said that it was overdue. Greens Senator Sarah Hanson-Young said:

The piecemeal responses from the Rudd government to this international education crisis indicate a lack of vision. The Greens hope the government's review will mark the start of a more hands-on, long term approach to international education.⁴⁶

Defending the Coalition's recruitment of Australian-educated overseas students to meet Australia's skills needs, former Immigration Minister, Phillip Ruddock has reportedly suggested that this policy had been undermined by poor state government enforcement. He called on the federal government to use its enforcement powers given the apparent failure of the states to properly regulate the industry.⁴⁷

Financial implications

The Explanatory Memorandum acknowledges that there are financial implications associated with the re-registration procedures proposed in the Bill. It suggests that these will be offset by the savings that states will make from 'taking a risk management approach and through re-directing existing resources from current auditing activities no longer required'. This is with the exception of Victoria and NSW who have already commenced rapid audit procedures. It is proposed that any additional costs will be met jointly under existing funding arrangements and agreements.⁴⁸

As noted earlier university sector representatives are expecting the re-registration procedures to be 'onerous and costly' for the providers. There are provisions in the Bill that specify that for a higher education provider the principal purpose of providing education may include providing education or conducting research. This may assist the authorities in taking more of a risk management approach towards this sector.

Main provisions

The provisions are well outlined in the Explanatory Memorandum. Therefore what follows is a brief outline of the main provisions.

Schedule 1—Re-registration etc. of providers

This schedule is mainly concerned with the new re-registration provisions.

46. Ross, op. cit., p. 4.

47. G Healy, 'Crackdown on student recruitment', op. cit., p. 29.

48. Explanatory Memorandum, Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009, p. 2.

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Items 5 and 7 would amend existing section 9 of the Act to introduce two new registration requirements for education providers—that the principal purpose of the provider is to provide education; and that the provider has clearly demonstrated capacity to provide education of a satisfactory standard. **Item 10** provides that a higher education provider is taken to have the principal purpose of providing education if its principal purpose is providing education or conducting research, or both.

Item 11 inserts proposed sections 9A and 9B. Proposed **section 9A** requires the re-registration of existing registered providers including the two new criteria for registration introduced in **items 5 and 7** and for higher education providers introduced in **item 10**. Proposed **section 9B** combines the existing provisions for deciding whether a provider is a fit and proper person for registration purposes with those for re-registration.

Item 14 amends the existing provisions for notifying states if the Secretary suspects non-compliance with the Act or the national code to include if he believes that the provider is not meeting the two new conditions for registration introduced in **items 5 and 7**. **Item 15** incorporates the changes for higher education providers introduced in **Item 10** into existing section 14 of the ESOS Act.

Item 18 amends the requirements for the Assurance Fund manager to notify the Secretary as soon as practicable as to when a provider who is not yet registered has paid its first annual contribution. It also provides for notification of payment after re-registration for the 2009 and 2010 calendar years.

Item 20 inserts a new section, proposed **section 74A**, concerning the need for the Fund manager to notify the Secretary about the payment of special levies information which is needed for re-registration purposes.

Item 22 adds to the circumstances in existing section 83 where the Minister may impose sanctions for non-compliance to include his/her belief on reasonable grounds that the provider does not meet either of the two new conditions introduced in **items 5 and 7** and the higher education requirements in **item 10**.

Item 25 inserts proposed **section 92A** to permit the automatic cancellation of a provider's registration for a course for a State if the provider is not re-registered under the new provisions by 31 December 2010. Under proposed **section 92B** there can be automatic cancellation if a designated authority does not recommend re-registration.

Item 26 amends **section 176** (which deals with the review of decisions) to allow for a decision not to re-register under proposed section 9A to be subject to review by the Administrative Appeals Tribunal (AAT).

Schedule 2—Other matters

This schedule deals with other matters including:

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- **item 3** (proposed **section 14A**) which enables the imposition of conditions on the registration of providers
- **item 4** (proposed **section 21A**) that requires providers to maintain and publish a list of all its agents and comply with any regulations relating to these agents
- **item 5** that adds to the circumstances for refunds of moneys in the case of provider default to include if the course ceases after it starts but before it is completed; exemptions from punitive provider default refund requirements for providers changing their legal entity by allowing that if the provider changes entity the Minister may issue a notice to the effect that the course is not taken to have ceased taking into account the change of delivery and outcome for students and any advice from the designated authority.
- **item 6** provides for regulations to prescribe the criteria for considering whether a particular course is a suitable alternative
- **items 7, 8 and 9** clarify the circumstances under which a call is made of the Assurance Fund.
- **item 14** provides for the discretionary removal of the prohibition on education providers collecting monies from students of the provider who have started their courses when a course has been suspended, for either the whole or part of the period of suspension, and
- **items 15 and 16** include allowing for review by the AAT against the Minister's decision to impose a condition on CRICOS registration and against a decision not to notify made under **new subsections 27(1A) and 95(3)**.

Concluding comments

The regulatory tightening provided for in this Bill is a measure to raise confidence in the providers operating in the industry pending the outcome of the ESOS Review. The addition of two new registration conditions on providers—that their principal purpose should be to provide education, and that they should have demonstrated capacity to provide education of a satisfactory standard—is an attempt to ensure that only bona fide education providers enter the industry. There remain questions, however, as to just how these requirements will be defined and applied.

The application of these new conditions to all existing providers through the re-registration process provided for in this Bill, is expected to weed out any existing providers who are not in the business for the right reasons. However, given government and industry assurances that suspect providers are in the minority, there have been concerns expressed about the workload and cost that this will impose on the majority, who are operating responsibly. They would prefer more of a risk management approach to dealing with the problem.

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As the failure of the ESOS regulatory framework is often attributed to lack of regulatory enforcement rather than to inadequate regulatory powers, there are legitimate questions about the limits to the number of additional regulatory requirements that can be effectively administered. Furthermore, Australia's migration skills selection policy has become, and is likely to remain, a significant demand side influence on the education industry. Therefore the framing of these immigration policies would arguably be as critical to the development of a quality international education industry, as is the regulatory framework that protects it.

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